

Wisconsin Privacy Laws

Health Information Privacy

Social service recipients- protection of personal information; Wis. Stat. ch. 46.

The law regulating social services in Wisconsin contains a number of provisions that protect personal information identifying social service recipients.

For example, the public may not have access to records containing personally identifiable information kept by a family care resource center (Wis. Stat. § 46.283) or care management organization (Wis. Stat. § 46.284) unless:

- The individual who is the subject of the personally identifiable information gives an informed consent to release the information.
- The law requires the release.
- The Wisconsin department of health and family services (“DHFS”), center, or organization must release the information to comply with its lawful duties.

A family care district may not disclose to the public any record containing personally identifiable information concerning an individual who receives its services without the individual’s informed consent, unless otherwise required by law (Wis. Stat. § 46.2895).

No person may use or disclose any information concerning an individual who has been selected for an assessment related to a home visitation program, or who applied for and declined such an assessment, unless the disclosure is connected with the activities of the home visitation program or medical assistance program, or unless the individual has provided his or her informed consent (Wis. Stat. § 46.515).

Reports of elder abuse or neglect may not be released by a county agency or other investigating agency except under the following circumstances (Wis. Stat. § 46.90):

- To the elder person, the person suspected of abusing the elder person, either of their guardians, or an agency or individual providing direct services to the elderly person or other persons involved, except that information identifying the person who initially reported the abuse may not be released.
- To the protective service agency involved, where the protective service agency maintains confidentiality.
- To a person designated by DHFS or the law to monitor and evaluate the program.

- For purposes of research if the researcher has been approved by DHFS or the county agency, and the researcher has provided assurances that confidentiality will be maintained.
- Pursuant to a court order.
- To law enforcement officials in accordance with established policy.

Nursing home facilities - rights of residents; Wis. Stat. § 50.09.

A resident in a nursing home has a right to confidentiality of health and personal records. The resident may refuse the release of his or her personal information to any individual outside the facility except in the case of the resident's transfer to another facility, or as required by law or 3rd-party payment contracts.

Alcoholism treatment programs - records of patients; Wis. Stat. § 51.45 (14).

The registration and treatment records of alcoholism treatment programs and facilities are confidential and privileged to the patient.

Mental health patient rights; Wis. Stat. § 51.61 (1) (n).

An individual who is receiving services for mental illness, developmental disabilities, alcoholism or drug dependency in a mental health treatment facility has a right to confidentiality of treatment records, to inspect and copy the records, and to challenge the accuracy of information in the records.

Health care services review; confidentiality of information; Wis. Stat. § 146.38.

Information acquired in connection with the review of an emergency health care provider, such as an ambulance service, emergency medical technician, or first responder, must be kept confidential. A person who discloses information or releases a record in violation of this law is civilly liable to any person harmed by the disclosure or release.

Emergency medical services - confidentiality of information; Wis. Stat. § 146.50 (12).

All records made by an ambulance service, emergency medical technician, or first responder shall be treated as confidential health care records subject to Wis. Stat. §§ 146.81 to 146.84.

Confidentiality of patient health care records; Wis. Stat. §§ 146.81 through 146.84.

All patient health care records shall remain confidential. Generally, patient health care records may only be released to a person upon the informed consent of the patient, or as authorized by the patient.

Release of these records or the information contained in them may be released without the informed consent or authorization of the patient only in certain situations described by the law. These situations, among others, include:

- Upon a court order or for testimony in court proceedings for hospitalization, guardianship, protective services, or protective placement.
- To medical staff members where necessary to provide patient care.
- To medical staff committees and other similar oversight groups, and to legally authorized government regulators, for conducting necessary audits.
- To a medical researcher of the purpose of medical research where the researcher agrees to maintain confidentiality.
- Upon the death of the patient, to the coroner or medical examiner for the purpose of completing the death certificate, to an organ procurement organization by a hospital in accordance with a lawful agreement, or to law enforcement officials for investigation of the death.
- If the subject is a juvenile victim of abuse, to various government regulated or court appointed advocates and guardians, and to law enforcement officials.
- If the subject is a juvenile placed in a foster home or other similar facility, or is being considered for placement, to various agency's or officials for the purpose of processing and maintaining the placement.
- To the department of transportation by a physician or optometrist where the patient is unable to safely operate a motor vehicle.
- Where the subject is a prisoner, to medical staff for the prisoner's care.
- If release of information contained in the records do not personally identify the patient.

The law restricting release of patient health care records apply to a wide range of health care providers, including: nurses, chiropractors, dentists, physicians, physical therapists, podiatrists, dieticians, athletic trainers, occupational therapists, pharmacists, acupuncturists, psychologists, social workers or other professional counselors, speech-language therapists, massage therapists, hospice, in-patient care facility, community-based residential facility, and rural medical center.

Where a health care provider ceases operating, most providers are required to notify the patients where his or her health care records will be maintained. If the provider intends to destroy the records, the provider must given notice enabling the patient to retrieve the records before destruction.

A person who illegally violates the confidentiality of patient health care records is subject to criminal penalties including imprisonment and fines, and, if a state or local government employee, termination or suspension without pay.

A person who illegally violates the confidentiality of patient health care records may also be liable to the person injured as a result of the violation for actual damages, additional damages of at least \$25,000 if the violation was willful or \$1,000 otherwise, and the costs and attorneys fees related to any legal action to recover the damages.

HIV tests - confidentiality of test results; Wis. Stat. §§ 252.12 (3) and 252.15 (5).

The results of a test for HIV confidential. Although the test subject, or the test subject's health care agent, may release the test results to anyone, no other person may release the test results except to certain persons identified in the law.

Among others, the persons to whom the test results may be released include:

- The test subject, the test subject's health care agent, or a person to whom release has been authorized by the test subject or the test subject's health care agent.
- A health care provider for the purpose of providing health care to the test subject, the health care provider's agent or employee for processing records, and the health care provider's review board for monitoring health services..
- A blood bank or plasma center.
- A health care provider that distributes human body parts.
- The state epidemiologist.
- A funeral director.
- A researcher who agrees to maintain confidentiality.
- A coroner or medical examiner.
- A sheriff, jailer, or prisoner's health care provider.
- To anyone subject to the lawful order of a court.

If Wisconsin department of health and family services performed the HIV test as part of its duty to conduct health surveys, the test results may only be released in a form that does not personally identify the test subject unless the release is to the test subject or another person with the test subject's informed consent.

Insurers - nondisclosure of personal medical information and other personal information;
Wis. Stat. §§ 604.08 (8) and 610.70.

Insurers doing business in Wisconsin shall maintain the confidentiality of personal medical information in its possession. An insurer may not disclose personal medical information about an individual without the express written consent of the individual or the individual's authorized representative except where the disclosure is made:

- In relation to the protection of the insured's interest in the assessment of causation, fault or liability, or in the detection of criminal activity or fraud.
- To an insurance regulatory authority, in response to an administrative or judicial order, or otherwise permitted by law.
- For the purpose of pursuing a contribution or subrogation claim.
- To a professional medical review organization.
- To a medical care institution or health care provider to verify insurance coverage or benefits, or to conduct an operations or services audit.
- To a network plan offered by an insurer, where the information is needed to coordinate the provision of health care and payments for the health care.
- To a group policy holder only where necessary to report claims experience or conduct an audit of the insurer's operations or services.
- For the purpose of making business decisions concerning the sale or merger of an insurance business.
- To the insurer's legal representative for the purpose of claims review, or legal advice or defense.

Upon receiving a written request from an individual who is the subject of personal medical records, an insurer shall provide the individual, or certain other persons designated by the individual, access to those records. The insurer shall also give the individual an opportunity to request corrections to the records, and shall notify the individual if it will honor the request.

In addition to the law governing personal medical information, the Wisconsin commissioner of insurance may refuse to disclose, and may prevent any other person from disclosing, personal information obtained in the course of regulating state insurance funds. For purposes of this law, personal information means information which can be associated with an individual through one or more identifiers.

Any person who knowingly and willfully obtains information about an individual from an insurer under false pretenses maybe liable for criminal penalties up to 9 months in jail and up to a \$25,000 fine, or maybe liable to the individual for actual damages, exemplary damages of not more than \$25,000, and costs and attorney fees.